

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States District Court  
Southern District of Texas  
FILED

AUG 20 2008

Michael N. Milby  
Clerk of Court

UNITED STATES OF AMERICA

vs.

BRIAN RHETT MARTIN

§  
§  
§  
§  
§

Criminal No. H-07-215

MOTION FOR RETURN OF PERSONAL PROPERTY

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, BRIAN RHETT MARTIN, Defendant, Pro Se, and hereby requests this honorable Court to order the return of personal property and for the grounds thereof would show the following:

I

The Defendant was charged with Felon in Possession of a Firearm in violation of 18 U.S.C. 922 (g) and Impersonation of an Officer of the United States in violation of 19 U.S.C. 912.

II

On March 14, 2008 the Defendant was re-arraigned and entered a plea of guilty to the above charges. On July 11, 2008 the Defendant was sentenced to 36 months imprisonment.

III

Previously, on December 03, 2004 the Defendant was arrested by U.S Marshal Service, FBI, and ATF agents. Upon his arrest he signed a consent to search form for his hotel room. Subsequently the FBI case agent Christopher N. Menard and TFO Robert Merchant searched the Defendant's automobile and hotel room and confiscated a good amount of personal property to be submitted as evidence.

IV

There was no forfeiture order entered in this case.

V

Pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure the Defendant requests this this court order the FBI or any other Federal Agents in possession of the below property to return the property to the Defendant or his attorney. The property that the Defendant requests return of is the following:

- \*Nine CD-ROM Data Disks and two Floppy Disks
- \*Nokia cellular phone (one battery), ESN 10606221384
- \*Motorola cellular phone (one battery), ESN 354502006371527
- \*Samsung cellular phone (two batteries), ESN 04010064095
- \*Motorola cellular phone (one battery), S/N 364VEJH7YR
- \*Motorola Pager, E005334467
- \*Miscellaneous power cords and radio chargers
- \*Four Handheld Radios: Motorola HT1000, s/n 402TY6723Z, Motorola STX821, s/n 678ASU0691. Motorola STX, s/n 726ANY3208. Standard s/n F1279
- \*Averatec 3200 Series Laptop Computer s/n NE01CU041002568
- \*Miscellaneous electrical equip, adapters and cables
- \*Two Radios: Motorola MT 1000, s/n 546AWN0848X, Icom IC-A22 s/n 59115
- \*Ultralite Versa Laptop m/n pc-410-1511, s/n 33005261N

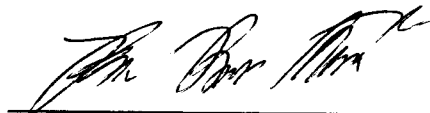
VI

A copy of the FBI FD-302s detailing the search and all personal property taken in included as an attachment to this motion and marked "Exhibit A".

VII

**WHEREFORE, PREMISES CONSIDERED,** the Defendant requests this honorable Court to grant this motion and order the return of the property listed herein.

Respectfully Submitted,



Brian Rhett Martin

FD-302 (Rev. 10-6-95)

## EXHIBIT A-PAGE 1

- 1 -

## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 12/08/2004

On December 03, 2004 at approximately 6:00 PM, BRIAN RHETT MARTIN was located by Deputy United States Marshals George Hephner and Alfredo Perez. MARTIN was staying at the HOMESTEAD SUITES, room 380, 7979 Fannin, Houston Texas. Deputy Marshal Hephner contacted Special Agent Keith W. Koncir with this information and stated that they would initiate surveillance of this location pending arrival of FBI and task force agents.

Deputy Marshal Hephner contacted SA Koncir again at approximately 7:00 PM to advise agents en route to the vicinity of 7979 Fannin that the Marshals had taken MARTIN into custody after MARTIN attempted to flee the area. The location of the arrest was in the vicinity of the EXTENDEDSTAY AMERICA SUITES 1301 South Braeswood, Houston, Texas. MARTIN stopped his vehicle, a black Ford Explorer SportTrac, Texas Registration 05N-KC1, in the parking lot of this hotel.

SA Koncir was the first FBI agent to arrive at this location followed by SA Christopher N. Menard, TFO Robert K. Merchant, SA Kendall Erickson, and SA Mary Daugherty.

MARTIN was advised that there was a federal warrant for his arrest for violation of his conditions of supervised release and a Texas State warrant for Theft of Services. At approximately 7:38PM, MARTIN was advised of his Miranda rights by SA Koncir and SA Erickson. MARTIN signed an FD-395 waiver of rights and agreed to be interviewed. MARTIN also gave consent to search his vehicle, a black Ford Explorer SportTrac, Texas Registration 05N-KC1, and Room 380 at the HOMESTEAD INN, where he had been staying. MARTIN signed an FD 26 Consent to Search Form for each location. These forms, and the waiver of rights form, will be maintained in the 1A section of the file. After the consent forms were signed, the Marshals turned custody of MARTIN over to the task force members at the scene and departed from the scene.

MARTIN'S vehicle was moved by TFO Merchant from its location near the entrance of the extended stay parking lot to a location near the rear corner of the lot, to allow the agents on scene more secure access to the vehicle. MARTIN asked TFO Merchant to take the vehicle out of four wheel drive. MARTIN

Investigation on 12/03/2004 at Houston, Texas

File # 266A-HO-63923-302

Date dictated 12/08/2004

by SA Christopher N. Menard:cnm, SA Keith W. Koncir, KWC  
TFO Robert K. Merchant, SA Kendall Erickson, SA Mary Daugherty

FD-302a (Rev. 10-6-95)

**EXHIBIT A-PAGE 2**

266A-HO-63923-302

Continuation of FD-302 of Brian Rhett Martin, On 12/03/2004, Page 2

stated that he had put his truck into four wheel drive when the Marshals attempted to stop him because he knew that the Marshals did not have four wheel drive, and that he could go places the Marshals could not.

A search of MARTIN's vehicle and person subsequent to his arrest identified the following items which will be submitted for potential use as evidence:

- 14 Credit cards and blank check stock in the name of Communications emergency response team.
- Powerline BB Gun, serial number 4603538.
- Collapsible ASP baton.
- Nine CD-ROM Data Disks, two Floppy Disks and assorted miscellaneous documents including receipts and business cards.
- Nokia cellular phone (one battery), ESN 10606221384.
- Motorola cellular phone (one battery), ESN 354502006371527.
- Samsung cellular phone (two batteries) ESN 04010064095.
- Motorola cellular phone (one battery) S/N: 364VEJH7YR
- Memorex USB Drive
- COMMUNICATION EMERGENCY RESPONSE TEAM (CERT) Identification card.
- Black Magnum boots, size 8 and black leather duty belt.
- CERT property tags (3).
- CERT Jacket.
- Motorola Pager, E005334467.
- Emergency Lights S/N: PMD65903.
- Emergency Lights, model: 118600p.
- Miscellaneous power cords and radio chargers.
- Head Phones.
- Emergency Lights (no model or serial number ).
- Five hand held radios: Motorola Astro s/n 310AWW0353, Motorola HT1000, s/n 402TYY6723Z, Motorola STX821, s/n 678ASU0691, Motorola STX, s/n 726ANY3208, Standard s/n F1279
- Satellite Telephone, Motorola Model 9505.
- Six Credit Cards, one check and two gift cards - on person
- 2 ID Cards, 1 Silver CERT badge, miscellaneous business cards.

After the vehicular search was concluded, MARTIN'S vehicle was parked in a parking space and locked. Photographs were taken of the exterior of the vehicle. The Hotel manager

FD-302a (Rev. 10-6-95)

## EXHIBIT A-PAGE 3

266A-HO-63923-302

Continuation of FD-302 of Brian Rhett Martin, On 12/03/2004, Page 3

was notified of the circumstances surrounding MARTIN's vehicle being in the lot. MARTIN was advised that his wife, ALLISON MARKOSKI would be allowed to reclaim the truck.

MARTIN was placed into TFO Merchant's vehicle for transport to the hotel room that he had rented. SA Daugherty rode with TFO Merchant and MARTIN. MARTIN asked for a bottle of water, which was provided by Task Force members. MARTIN'S diabetes treatment supplies to include a blood tester, insulin and syringes were recovered and maintained by Task Force members and provided to MARTIN upon request. This diabetic treatment kit was subsequently submitted to Harris County Sheriff's Department when MARTIN was processed into their jail.

On arrival at the HOMESTEAD SUITES hotel at approximately 9:15PM, ALLISON MARKOSKI was observed packing her vehicle, a Ford Explorer, with items that she identified as having come from room 380. MARKOSKI stated that her children were in room 380, but that she had never been to the hotel before that evening. According to MARKOSKI, she had been contacted by MARTIN by telephone just prior to his arrest by the U.S. Marshals. MARTIN had advised her that she should clear his stuff from the room, as he would not be able to do so.

SA Daugherty requested permission to search the items that had come from the hotel room and advised MARKOSKI that MARTIN had given consent to search the hotel room and the items in it. MARKOSKI agreed to allow Task Force members search the items she took out of the hotel room after seeing MARTIN'S signed consent form. During the search, Markoski prevented SA Koncir from removing a radio from the vehicle, stating that it belonged to her. Several items that were recovered from Markoski's vehicle will be entered into evidence. These items include:

- Averatec 3200 series Laptop Computer s/n NE01CU041002568
- Lexmark Printrio Scanner m/n 4476-K02, s/n 23380614271 (this scanner had a blank paycheck stub on the scanning bed.)
- CERT T-shirt
- Miscellaneous electrical equipment, adapters and cables
- badge holder and handcuff key
- A copy of Norton Anti-virus 2005
- Several Blank Checks in the name of CERT
- a variety of receipts and paperwork.

FD-302a (Rev. 10-6-95)

## EXHIBIT A-PAGE 4

266A-HO-63923-302

Continuation of FD-302 of Brian Rhett Martin, On 12/03/2004, Page 4

- Two Radios: Motorola MT 1000 s/n 546AWN0848X, Icom IC-A22 s/n 59115

Subsequent to the search of MARKOSKI'S vehicle, SA Daugherty and SA Erickson accompanied MARKOSKI to room 380, and conducted a search of the hotel room. While in the hotel room, they noted that there was a crib in the room. Both of MARKOSKI'S children were in the room as well. A search of the room identified the following item that was submitted to evidence:

- Ultralite Versa Laptop m/n pc-410-1511, s/n 33005261N

After the search of the hotel room was completed, MARTIN was transported to the FBI building located at 2500 East T.C. Jester Boulevard, Houston, Texas for questioning. MARTIN asked to bring a loaf of bread, and package of sliced ham that were in the hotel room, citing his diabetic condition. MARTIN was allowed to take the food items requested, and was allowed access to this food upon his request.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Motion for Return of Personal Property** was mailed to the Assistant United States Attorney in this cause on this the 19<sup>th</sup> day of August, 2008.



\_\_\_\_\_  
Brian Rhett Martin

CERTIFICATE OF CONFERENCE

I hereby certify that due to this motion being filed by a pro se defendant who is incarcerated no communication attempt was made. The defendant is unable to contact the U.S. Attorney on this case due to the phone system in the Federal Detention Center not allowing calls to the U.S. Attorney's Office.



\_\_\_\_\_  
Brian Rhett Martin

Brian Rhett Martin  
Federal No. 13112-064  
Federal Detention Center  
P.O. Box 526255  
Houston, TX 77052-6255

August 19, 2008

U.S. District Clerk  
Southern District of Texas  
515 Rusk  
Houston, TX 77002

United States District Court  
Southern District of Texas  
FILED

Re: U.S. v. Brian Rhett Martin; 4:07-cr-00215

AUG 20 2008

To Whom It May Concern:

Michael N. Milby  
Clerk of Court

Enclosed are the following documents:

1. Pro Se Motion for Return of Personal Property (2 pages)
2. Certificate of Service and Certificate of Conference (1 page)
3. Proposed Order
4. Exhibit to above motion marked "Exhibit A" (4 pages)

Please file these documents in the PACER system and bring them to the attention of the court.

I appreciate your help on these issues.

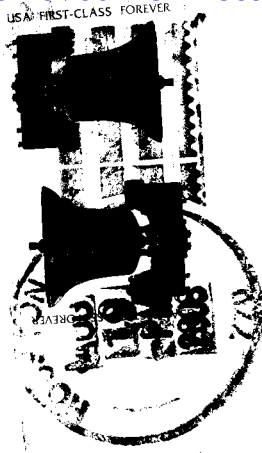
Sincerely,



Brian Rhett Martin

cc:File





**SPECIAL LEGAL MAIL**

Brian Rhett Martin #13112-064  
Federal Detention Center  
P.O. Box 526255  
Houston, TX 77052-6255

U.S. District Clerk  
Michael Milby  
515 Rusk  
Houston, TX 77002

United States Courts  
District of Texas  
Southern  
FILED

AUG 20 2008

Michael N. Milby, Clerk

7700232500 0096

